AMERICAN INTERNATIONAL ASSURANCE CO. LTD. v. AU-YONG PENG WOON

[O.C.J. (Gill J.) March 22, 1963]

[K.L. — Originating Summons No. 9 of 1962]

Practice and Procedure — Application for sale of charged lands by Originating Summons — No affidavit filed in reply — No appearance at hearing — Ex parte order for sale — Subsequent application to set order aside — R.S.C., O.28 r.15, O.36 r.33, O.54 r.6 and O.70 r.2.

This was an application by a chargor to set aside an order earlier obtained by the chargee *ex parte* for the sale of the lands charged.

The chargee had commenced his suit by way of an originating summons and the chargor, who was an advocate and solicitor, had duly entered appearance. He filed no affidavit in reply to that of the chargee filed in support of the originating summons. A date for hearing was fixed but at the request of the chargor this was postponed and the new date was notified by the Registrar to the chargor by letter. A few days before the date fixed for the hearing the chargor applied by letter for a further postponement. He received no reply from the Registrar. He did not appear at the hearing and in his absence an order for the sale of the land was made. On a further application by the chargee sale of the charged lands by public auction was fixed for February 2, 1963. The chargor successfully applied for a postponement of the sale to March 25, 1963 on the ground of a clerical error in the proclamation of sale as to reserve price. On 19th March, 1963 the chargor applied to set the *ex parte* order aside and sought to impugn the transaction as being a money-lending transaction.

Held: (1) the appropriate order was Order 36 rule 33 which required an application to set aside the order to be made within six days. As an advocate and solicitor the chargor should have been aware of this and his failure to avail himself of the remedy was fatal to his application;

(2) on the merits themselves the chargor's application also failed.

APPLICATION by way of Notice of Motion.

K. L. Devaser for the chargor-respondent applicant.

N. A. Marjoribanks for the chargee-applicant respondent.

Gill J.: This was an application by way of Notice of Motion by the chargor-respondent to these chargee proceedings to set aside a so-called *ex-parte* order made in these proceedings by Suffian J. on 3rd September, 1962 for the sale of certain lands which were the subject matter of a charge executed by the respondent in favour of the applicant.

The history of the proceedings is as follows. The originating summons was filed on 4th May, 1962. The respondent, who is an advocate and solicitor of the Supreme Court, entered an appearance on 25th May, 1962, but he filed no affidavit in reply to the affidavit by the applicant in support of the originating summons. When a notice was taken out for the hearing of the originating summons on 2nd July, 1962, he sent a letter dated 25th June, 1962 to the Registrar asking for a postponement of the matter for 1½ months as he was going to Singapore for an urgent medical treatment of his neck. On the same day the Registrar sent the respondent a letter dated 25th June, 1962, to the effect that the summons had been taken out of the hearing list for 2nd July, 1962 and that he would be informed of a new date in due course. On 17th July, 1962 the Registrar sent a letter to the respondent to say that the summons had been fixed for hearing on Monday, the 3rd day of September, 1962 at 10 a.m. On 28th August, 1962 the respondent again sent a letter to the Registrar applying for a month's postponement on the ground that he was still under medical treatment and was not fit to attend to his work for some time to come. He enclosed a medical certificate with the letter. No reply granting an adjournment was sent to his letter and yet he did not appear on the 3rd of September, 1962, either by himself or by his solicitor. An order was therefore made in terms of the originating summons.

It is to be observed that right up to the date of hearing of the originating summons on 3rd September, 1962, the respondent filed no affidavit in reply to give any indication as to what grounds, if any, he had for resisting the order asked for in the originating summons. After the Judge had made the order, subsequent proceedings were taken by the applicant to have the charged lands sold by public auction. The respondent made an application on 29th January, 1963, for an order that the public auction fixed for 2nd February be stayed because of a clerical error which had crept into the proclamation of sale as to the reserve price. In the event the sale was postponed to the 25th of March, 1963.

The present application by way of Notice of Motion was filed on the 19th of March, 1963. For the first time the respondent raised any question as to the irregularity of the proceedings. His main ground, as far as I can see from his affidavit in support of the motion, is that this was a moneylending transaction and that therefore he should be given an opportunity to contest these proceedings on merit. Mr. Devaser on behalf of the respondent argued that the present application to set aside the order of Suffian J. is made under Order 28 rule 15 or under Order 36 rule 33. He further argued that Order 54 rule 6 and Order 70 rule 2 are also relevant. Mr. Marjoribanks in opposing the application argued that Order 27 rule 15 does not apply as it relates to judgment in default of pleadings and that the relevant order is Order 54 rule 6.

In my opinion the appropriate Order in this case is Order 36 rule 33 which requires an application to set aside to be made within six days, although the other Orders mentioned by counsel

have some bearing on the matter. As I have stated above the respondent is an advocate and solicitor of the Supreme Court. He cannot be heard now to say that he was not aware of the remedy which was open to him if he had any reason to complain about the order made on 3rd September, 1962. The Rules of the Supreme Court are meant to be complied with and if a person goes to sleep and does not take appropriate measures within a reasonable period he cannot expect any indulgence from the Court.

On the merits themselves I did not think that the respondent had made out any case. It is clear that the applicant in these proceedings is an insurance company and that as such it is expressly excluded from the definition of "moneylender" under the Moneylenders Ordinance, 1961. Quite apart from the questions raised under the Moneylenders Ordinance, 1951, which in my opinion are *prima facie* not sustainable, the respondent has not alleged that the sum of $225,000 was not lent to him on the date of execution of the charge. I therefore dismiss the application with costs.

Application of chargor-respondent dismissed.

Solicitors: *K. L. Devaser & Co.; Lovelace & Hastings.*

Re CHUA HO ANN

[O.C.J. (Buttrose J.) March 29, 1963]

[Singapore — Originating Motion No. 13 of 1962]

Administrative Law — Citizenship — Reference to Committee of Inquiry under Singapore Citizenship Ordinance — Order of Prohibition directed at Committee — Whether Committee acts in judicial or ministerial capacity — Whether prohibition will lie.

Constitutional law — Deprivation of citizenship — Order of prohibition against Minister — Functions of Minister under Singapore Citizenship Ordinance — Whether judicial or administrative.

Singapore Citizenship Ordinance, 1957, s.22 — Deprivation of citizenship — Reference to Committee of Inquiry — Whether prohibition will lie against Committee and Minister — Functions of Committee and Minister under the Ordinance.

The prohibition does not lie against the Committee of Inquiry established under section 22 of the Singapore Citizenship Ordinance, 1957, because the Committee merely conducts factual investigations on behalf of the Minister in an advisory capacity and the duties of the Committee are not in any relevant sense judicial or quasi-judicial but purely ministerial.

As the functions of the Minister in carrying out the provisions of the Singapore Citizenship Ordinance and in making his final decision to deprive a person of his citizenship are fundamentally administrative, an order of prohibition does not lie against the Minister. The Minister is answerable to the legislature but his actions cannot be controlled by the Courts.

Cases referred to:—

(1) *Rex* v. *Electricity Commissioners* [1924] 1 K.B. 171.

(2) *Rex* v. *Manchester Legal Aid Committee* [1952] 1 All. E.R. 481.

(3) *Rex* v. *London County Council* [1931] 2 K.B. 233.

(4) *In re Ong Eng Guan* [1959] M.L.J. 92.

(5) *Reg* v. *Camborne Justices* [1955] 1 Q.B. 41.

(6) *Lim Lian Geok* v. *The Minister of the Interior* [1962] M.L.J. 159.

ORIGINATING MOTION.

David Marshall for the applicant.

Tan Boon Teik (Sr. Crown Counsel) for the respondent.

Cur. Adv. Vult.

Buttrose J.: This is an application for an Order of Prohibition directed to:—

(a) the Minister for Home Affairs prohibiting him from taking any further step in pursuance of the Notice of the Permanent Secretary to the Ministry of Home Affairs of the 19th December, 1960, to deprive one Chua Ho Ann (hereinafter referred to as 'the applicant') of his citizenship under the provisions of section 22(3) of the Singapore Citizenship Ordinance, 1957 (No. 35 of 1957) (hereinafter referred to as 'the Ordinance'); and

(b) the Committee of Inquiry constituted under the provisions of section 22 of the Ordinance prohibiting it from proceeding with the Inquiry into the proposal to deprive the applicant of his citizenship.

Section 22 so far as it is material to the present proceedings is as follows:—

"(1) A citizen of Singapore who is a citizen by registration or by naturalization shall cease to be such a citizen if he is deprived of his citizenship by an order of the Minister made in accordance with the provisions of this section. — (The applicant is a citizen by registration).

(3) The Minister may, by order, deprive any such citizen of his citizenship if he is satisfied that that citizen —

.....

(d) has at any time after registration been engaged ..... in any criminal activities which are prejudicial to the interests of public safety, peace or good order.

(5) The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Singapore.

(6) Before making an order under this section, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the *ground* on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this section.

(7) If any person to whom such notice is given applies within such time as may be prescribed to have the case referred to a committee of inquiry, the Minister shall, and in any other case may, refer the case to a committee of inquiry consisting of a Chairman, who shall be a person qualified to be appointed a judge, and two other members appointed by the Minister in that behalf.

(8) The committee of inquiry shall, on such reference, hold an inquiry in such manner as may be prescribed and submit a report to the Minister and the